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**TÍTULO:** Influencia de los actos jurídicos internacionales sobre la legislación y la práctica de aplicar sanciones penales alternativas al encarcelamiento en la Federación de Rusia.

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**RESUMEN:** El artículo destaca el desarrollo del sistema de castigo, que representa una alternativa al encarcelamiento en Rusia, teniendo en cuenta la influencia de los actos jurídicos internacionales. El autor se centra en las principales áreas de esta influencia, proporciona datos sobre las problemáticas en el campo y los resultados del trabajo realizado para eliminarlos. Los problemas se analizan teniendo en cuenta los datos estadísticos de la Federación de Rusia.

**PALABRAS CLAVES:** actos jurídicos internacionales, normas internacionales, sanciones penales, sistema penal, alternativa al encarcelamiento.

**TITLE:** Influence of international legal acts on the legislation and practice of applying criminal penalties alternative to imprisonment in the Russian Federation

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**ABSTRACT:** The article highlights the development of the punishment system, which represents an alternative to imprisonment in Russia, taking into account the influence of international legal acts. The author focuses on the main areas of this influence, provides data on problematic issues in the field and the results of work done to eliminate the latter. The problems are analyzed taking into account the consideration of statistical data of the Russian Federation.

**KEY WORDS:** international legal acts, international standards, criminal penalties, criminal penal system, alternative to imprisonment.

## **INTRODUCTION.**

Ensuring the implementation of criminal penalties is directly related to the invasion of human rights, and therefore, no doubt, must satisfy the requirements established by international standards in this field.

Despite the fact, that punishments related to deprivation of liberty are predominant in terms of the priority of attention from the countries of the world community, nonetheless, punishments representing an alternative to deprivation of liberty should also not contradict the requirements of international documents.

## **DEVELOPMENT.**

### **Research methodology.**

Theoretical and methodological provisions were presented by the work of Russian scientists on improving the system of punishments, alternative to imprisonment, the conclusions and suggestions received in the course of applied research in the field in the existing socio-economic and socio-political conditions, the problems of the effectiveness of existing federal legislation.

The research used such scientific research methods as the method of analysis of statistical data, the sociological method, the formal logical method.

The statistical method makes it possible to identify and study quantitative indicators of the use of punishments, alternative to imprisonment, to determine the most demanded by practice from them, to establish their specific gravity, and to trace the dynamics of application. The sociological method allows you to evaluate the behavior of people associated with the issues of the appointment and execution of sentences, alternative to imprisonment. The use of the formal logical method made it possible to isolate and evaluate the modern directions of development of the legislation of the Russian Federation in the field of legal regulation of the use of punishments alternative to imprisonment.

### **The results of the study.**

Modern reality directly affects the nature of the systematic nature of diverse social relations regulated by domestic and international law. And this leads to the convergence of data regarding independent legal systems [Reshetov YU.S. (2014)].

Modern international law, as a system of legal norms, is capable of regulating not only interstate and other international relations, but also certain domestic relations. The regulation of these relations is expanding under the influence of a wide range of objective factors, including the globalization of international life, the internationalization of many domestic norms and institutions, the development of democratic principles for ensuring human rights and fundamental freedoms; achievements of scientific and technological progress. ... One of the main tasks of participants in international communication is the development of cooperation within the framework of the principles and norms of international law and the establishment of the democratic foundations of national law of states [Tiunov O.I. (2014); Tiunov O.I. (2012), p. 69].

The legal basis of the mechanism of national legal implementation of international criminal law are the provisions of the Constitution of the Russian Federation, namely, part 4 of Art. 15: “The generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If other rules are established by an international

treaty of the Russian Federation than those provided by law, then the rules of the international treaty shall apply” [4]. In addition, the prevailing practice is based on the norms of Part 3 of Art. 15 of the Constitution of the Russian Federation that any regulatory legal acts affecting the rights, freedoms and duties of a person and a citizen cannot be applied if they are not published officially for the public, as well as part 3 of art. 5, Art. 30 Federal Law “On International Treaties of the Russian Federation” [5], further clarified in paragraph 4 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 5 of October 10, 2003, emphasizing that the courts should apply only those international treaties that have been officially published [6].

At the same time, legal force in this case should have exclusively an international treaty ratified by the Russian Federation, which in the future will make it possible and legally true to implement its provisions in the current criminal law of our country.

V.A. Utkin points out that only those standards that are reflected in ratified international treaties and other generally recognized international legal acts (Article 15 of the Constitution of the Russian Federation, Article 3 of the Penal Code of the Russian Federation) are directly implemented [Utkin V.A. (2015), p. 14]. At the same time, we agree with the opinion of E.N. Subbotina noting that the provisions enshrined in the Constitution of the Russian Federation should not be interpreted as an absolute primacy of international law, but only as a priority for applying the provisions of international treaties in case they contradict federal laws, which in itself does not make the legal system open [Subbotina E.N. (2013), p. 199; Khlestov O.N. (1994), p. 52-59].

Speaking about the international legal aspects of the development of the punishment system, which serve as an alternative to imprisonment, it should be emphasized that the main driving forces here are the standards developed by the United Nations (hereinafter UN). Since its founding, the UN has been the main global coordinator for the development and application of principles and standards in the field of criminal justice [Skirda M.V. (2009), p. 165; Clark R.S. (1995), p. 6]. In chapter IX,

International Economic and Social Cooperation of the UN Charter in Art. 55 draws the attention of states to the need to promote higher living standards, conditions of social progress and development; the resolution of international problems in the social field and similar problems; universal respect for and observance of human rights and fundamental freedoms for all [12]. These provisions are fundamental to UN criminal justice activities.

One of the activities of the UN standards developed by congresses in the field of law enforcement is the impact of UN standards on the formation of national policies and domestic legislation in the field of criminal justice.

It should be emphasized that international legal standards, being in accordance with the Constitution of the Russian Federation a part of the legal system of Russia, without losing their international legal significance, at the same time affect the content of normative domestic regulation. However, do not forget that not all international acts are binding, many of them are advisory in nature, and therefore their provisions in a particular state are implemented as the necessary socio-economic conditions are created taking into account the national mentality and other circumstances.

The Decree of the Plenum of the Supreme Court of the Russian Federation of October 10, 2003 No. 5 emphasizes that the rights and freedoms of man and citizen are recognized and guaranteed in the Russian Federation in accordance with generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (part 1 of article 17 Constitution of the Russian Federation).

According to Part 1 of Article 46 of the Constitution of the Russian Federation, everyone is guaranteed judicial protection of his rights and freedoms. Based on this, and also from the provisions of h. 4 Article. 15, part 1 of article 17, Art. 18 of the Constitution of the Russian Federation, human rights and freedoms in accordance with generally recognized principles and norms of international law, as well as international treaties of the Russian Federation, are directly applicable within the

jurisdiction of the Russian Federation. They determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and are provided with justice. Following the recommendations of international standards necessitates the universalization of punishments that ensure the implementation of functions prescribed by law and the achievement of established goals.

A number of international standards aimed at protecting human rights such as the Standard Minimum Rules for the Treatment of Prisoners [13]; United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) [14]; Code of Conduct for Law Enforcement Officials [15] Basic Principles for the Treatment of Prisoners [16] The UN leading and most comprehensive standard in the field of the application of punishments and alternative measures to deprivation of liberty is the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), setting out in paragraph 2.3 that “in order to provide greater flexibility in accordance with the nature and severity of the offense, the identity and biography of the offender, as well as with the interests of protecting the community and to avoid unjustified the application of imprisonment, the criminal justice system should provide a wide range of measures, non-custodial" [17].

At the same time, it is necessary to draw attention to the fact that the current trend in world criminal policy is the path to expanding the practice of applying punishments and alternative measures to imprisonment in punitive systems of states of the world community. The application of such criminal law measures is guided by many international legal acts. Among the latter, in addition to the Tokyo Rules, the El Salvador Declaration on Integrated Strategies for Responding to Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (adopted by UN General Assembly Resolution 65/230 of December 21, 2010). Thus, paragraph 51 of this declaration emphasizes the need for more active use of alternatives to imprisonment, which may include community service, restorative justice measures and electronic surveillance [18].

Among the regional international standards, that is, those contained in the documents to which the states located within a given region adhere, we can mention the European rules on the application of public sanctions and penalties adopted in 1992 by the Council of Europe (Recommendation No. R (92 ) 16 of the Committee of Ministers to member states regarding European rules) [19], Recommendation of the Committee of Ministers to member states of the Council of Europe on European rules regarding public sanctions and measures (adopted by Committee M of Ministers on March 22, 2017 at the 1282 meeting of the Deputy Ministers) (Recommendation CM / Rec (2017) 3) [20], European Probation Rules adopted in 2010 by the Council of Europe (Recommendation No. Rec (2010) 1 of the Committee of Ministers of the Council of Europe “On the European Probation Rules”) [21]; however, for the consistent implementation of international standards in a particular country, a combination of economic, political, social, ideological, personnel and organizational conditions is necessary.

In developing alternative types of punishment to imprisonment, it is extremely important not only their content and order, but also their ability to become a real counterweight to the above punishment. The use of alternative sentences of deprivation of liberty constantly encounters fairly persistent misconceptions about the value of more severe punishments in terms of their content, their most effective impact on the offender and the more stable result of his serving, as opposed to the first perceived as having a milder effect. On this circumstance D.S. Chukmatov asks: “Once again, the main question is the choice between what is more valuable for society: a harsh retribution for a crime or the return to society of their fellow citizens who have committed a crime?”. Continuing his thought, he emphasizes that “the maintenance of a large number of state citizens in prisons does not benefit society, but rather, on the contrary, cultivates indifference to the future of those who are behind bars. Often this does not bring benefits to the injured party, except for partial moral satisfaction, which is

unlikely to ever be sufficient due to the irreparable loss of the crime" [Chukmatov D.S. (2014), p. 111-112].

The implementation of international obligations is currently one of the main ways to improve domestic legislation. The norms of international standards in this area contain progressive provisions tested by the international community, which can serve as a basis for further development of the criminal and penal legislation of Russia [Fedotova E.N. (2017), p. 28].

On December 14, 1990, UN General Assembly Resolution 45/110 adopted the "United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)", which became the first universal specialized document that formed the most important principles for the application of alternative deprivation of liberty punishments. This act for the first time at the international level formulates the issues of providing minimum guaranteed assistance to persons to whom alternatives to imprisonment apply, from the stage of initiating a criminal case to the release of the offender from serving his sentence and assisting him in social adaptation [Abaturov A.I. (2014), p. eighteen].

The rules, having a recommendatory nature, are applied on the basis of the political, economic, social and cultural conditions of each country, as well as the goals and objectives of its criminal justice system. They aim states to develop alternative measures to imprisonment within their legal systems.

The international document adopted by the UN General Assembly, on the one hand, proposes, and on the other, obliges to follow its spirit and letter. In particular, in resolution dated December 14, 1990 N 45/110, the General Assembly "recommends the implementation of the Tokyo Rules at the national, regional and interregional levels, taking into account the political, economic, social and cultural conditions and traditions of countries" (Clause 2), "calls member countries to apply the Tokyo Rules in their policies and practices "(Clause 3), and also "invites Member States to bring the Tokyo Rules to the attention of, inter alia, law enforcement officials, prosecutors, judges, and supervisors or over conditionally convicted persons, lawyers, victims of offenses, offenders, social



services and non-governmental organizations related to the application of measures not related to imprisonment, as well as members of executive and legislative bodies and the general public” (Clause 4).

Based on a comparative analysis of alternative sanctions sanctioned by international standards with a list of existing criminal penalties provided for in Art. 44 of the Criminal Code, you can see that the vast majority of the listed penalties recommended for use by the Tokyo Rules with the corresponding difference in terminology are used in our country. At the same time, such penalties as verbal sanctions, remarks, suggestions, censures or warnings are unknown to domestic law, absent in the current criminal law and such a measure as the return of property to the victim or a resolution on compensation.

As for the confiscation of property, it is currently present in Section VI of the Criminal Code of the Russian Federation “Other measures of a criminal legal nature” and is essentially a special confiscation (confiscation of property obtained by criminal means, as well as tools or means of committing a crime). An analogue of the defeat in civil rights stipulated by the Tokyo Rules is the punishment of deprivation of the right to occupy certain positions and engage in certain activities, in connection with the direction of its impact on the infringement of the labor rights of the convicted person.

The bulk of the sanctions of articles of the Special Part of the current Criminal Code of the Russian Federation for committing crimes of small and medium gravity provides for punishment alternative to imprisonment. At the same time, for a certain period of time, when the court resolves the question of choosing the type of punishment for the guilty person from the existing list of punishments in the alternative sanction of a specific article, it was impossible to make a real choice from alternative punishments due to the delayed nature of the action of some of their types (compulsory work, restriction of freedom , later - forced labor, still - arrest).

In connection with the aforementioned, a number of problems arose with the implementation of the existing punishment system, the main of which was the violation of the unity and interconnection of the elements of the punishment system due to the failure to introduce individual punishments.

In addition, the possibility of a “wider” choice of alternative types of punishments to deprivation of liberty in certain cases is absent due to the special nature of the latter, for example, the type of punishment such as deprivation of the right to hold certain posts or engage in certain activities is applicable, for the most part, only to persons replacing posts in state or municipal bodies; the application of the fine is limited by the need to take into account the property status of the convict and his family members, since it is pointless to impose a fine on a person who is not able to pay it; a group of punishments related to the forced nature of labor: compulsory, corrective and compulsory labor cannot be imposed on persons incapable of work (the need for clarification of the ability to work of such persons is specifically drawn to the attention of the courts in Decree of the Plenum of the Supreme Court of the Russian Federation of December 22, 2015 No. 58 [25]).

It should be noted that each year from 2010 to 2018, the punishment in the form of a fine (from 11.8% - 15.8%) is prevailing in judicial practice among sentences alternative to deprivation of liberty, followed by compulsory work (9.5% - 19.1%), in the third - correctional labor (5.1% - 10.4%). The exception is the last three years of 2016 and 2018, when the first place was the punishment in the form of compulsory work (in 2016 - 19.1%, in 2017 - 18.4%, in 2018 - 17, 4%).

In general, it must be said that, despite all the political statements, as well as the enshrined provisions in the Concept of the development of penal correctional system up to 2020, the expansion of the practice of punishment, alternative to imprisonment, is carried out mainly by reducing the use of the institution of probation, the use of which was reduced from 38.1% in 2010 to 27.7% in 2018. As for imprisonment, its reduction is not so significant from 31.5% in 2010 to 28.9% in 2018.

It should be noted that the share of all sentences, alternative to imprisonment, imposed by the courts of the Russian Federation of the total number of all convicted in 2018 amounted to 42.4% (2017 - 42.98%, 2016 - 43.0 %; 2015 - 33.1%; in 2014 - 39.6%; 2013 - 40.5%; 2012 - 38.7%; 2011 - 32.6%; 2010 . - 30.0%). In other words, the expansion of the practice of applying punishments alternative to imprisonment, although it has an upward trend line, but this practice does not have stability, but develops with failures. From 2010 to 2013, we are seeing a steady increase from 30.0% to 40.5%, then from 2013 to 2015 there is a decrease from 40.5% to 33.1%, and in 2016 G. - a sharp jump to 43.0%, then a slight decrease in 2017 - 42.98%, in 2018 - 42.4%. Thus, over a nine-year period, the amount of sentencing alternatives to imprisonment has not even reached 50% of the total number of convicted persons.

In paragraphs Clauses 14.3 and 14.4 of the Tokyo Rules state that if a measure not related to imprisonment is ineffective, this should not automatically lead to the application of a measure related to imprisonment. Imprisonment may be imposed only in the absence of other suitable alternative measures. “The world of prisons,” V. Stern points out, “is a gloomy world, a world of human suffering and the inhumanity of systems. Beyond the walls of a prison is a society that knows little about what is happening in prisons, but frightened by the growth of crime and ardently wanting to believe that this growth can be stopped by locking people in prisons” [Stern W. (2000), p. 14].

In addition, the offender is in prison, as I. Ya. Correctly points out. Foynitsky, “breaks away from society and thereby deprives him of a certain share of the workforce. ... Therefore, the punishment should be as economical as possible ...” [Foynitsky I. Ya. (1889), p. 67].

In order to avoid the unjustified use of imprisonment, the Tokyo Rules recommend that a punishment system be developed that provides for a wide range of non-custodial measures. The number and types of measures not related to imprisonment should be determined in such a way that a sequence of sentences remains possible. Thus, such a punishment as imprisonment should become a kind of

exceptional measure when the possibilities of other punishments that are an alternative to it have already been exhausted.

The deformation of the personality of convicts who have committed crimes of small and medium gravity is not so deep that it allows them to be corrected without imprisonment in accordance with the law. Various kinds of negative traditions and subculture norms accepted among the prisoners held in the penitentiary institution did not affect the behavior of these individuals [Kashuba, Yu.A. (2018), p. 113].

Speaking about the possibility of reforming the list of punishments enshrined in the criminal law, one can cite the statement of Professor V.I. Seliverstova. Fundamental reforms of the content of traditional punishments in the form of imprisonment, correctional labor and other types, - V.I. Seliversts - are impossible for reasons not only of high material costs, but also the lack of any scientific justification for the appropriateness of such significant changes. However, this does not exclude further changes in the list of punishments, for example, combining punishments in the form of compulsory labor, correctional labor and forced labor into a single punishment with different modes of serving it [Seliverstov V.I. (2014), p. 88].

## **CONCLUSIONS.**

Currently, taking into account the generally recognized principles and norms of international law and international treaties of the Russian Federation, international standards in the field of criminal penalties, it is necessary to develop, expand and improve the practice of applying penalties alternative to imprisonment, which are a real counterbalance to the latter. At the same time, this practice should be the result of a reduction in the total number of persons sentenced to real imprisonment, and not a reduction in the use of the institution of probation, which has been observed over the past 10 years. Imprisonment (in the broad sense) should be an extreme (exceptional measure), after exhausting the possibilities of the system of punishments, alternative to imprisonment.

## **Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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